No. 80-1141

In the Supreme Court of the United States

OCTOBER TERM, 1980

ESTATE OF ANNABEL L. CADY, DECEASED, ET AL.,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioners seek review of the decision below in this federal estate tax case holding that gifts from the decedent to her son within 28 months preceding her death in 1974 were made in contemplation of death and thus includible in her gross estate. After examination of all of the relevant facts, the Tax Court found (Pet. App. A10-A12) that the decedent's gifts were made in contemplation of death. The court of appeals affirmed, holding (Pet. App. 3) that the Tax Court had applied the correct legal standard and that its findings were not clearly erroneous.

Section 2035(a) of the Internal Revenue Code of 1954 (26 U.S.C. (1964 ed.)), as in effect during the years involved in this case,[1] provided that the value of property transferred by the decedent, without adequate consideration, in contemplation of death is includible in the decedent's gross estate for federal estate tax purposes. The statute also created a rebuttable presumption that "unless shown to the contrary," gifts made during the three years prior to death were made in contemplation of death. Section 2035(b).

Petitioner argues (Pet. 6-7) that the evidence does not support the statutory presumption and that the Tax Court drew improper inferences from the evidence. But this fact-bound ruling is "of no importance save to the litigants themselves" (*Rudolph* v. *United States*, 370 U.S. 269, 270 (1962)). There is accordingly no legal question warranting review by this Court. Moreover, the change in the statute (see *supra*, note 1), which requires the value of all property transferred by a decedent within three years of death to be

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[1]As the court of appeals observed (Pet. App. A2), Section 2035 was amended by Section 2001(a)(5) of the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1848, effective for all transfers made on January 1, 1977, or thereafter, to eliminate the rebuttable presumption of contemplation of death transfers. As amended, Section 2035(a) provides that "the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the three-year period ending on the date of decedent's death."

included in the decedent's estate for estate tax purposes, deprives the question presented in this case of any continuing importance.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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